IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2876 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIMANBHAI KESHAVBHAI & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR VIKRAM J THAKOR for Petitioner(s) : 1 - 2.DELETED for Petitioner(s) : 3, 5,NOTICE SERVED for Petitioner(s) : 4,
MR LR PUJARI AGP for Respondent(s) : 1,
NONE for the Respondent No.2,
None for Respondent(s) : 3,
MR PV NANAVATI for Respondent(s) : 3.2.1,3.2.2
MR VIBHUTI NANAVATI for Respondent(s) : 3.2.1,3.2.2

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/01/2007

ORAL JUDGMENT

1. Mr.Vikram Thakor, learned counsel for the petitioners, Mr.Vibhuti Nanavati, learned counsel for the respondent

Nos.3/1 to 3/3 and Mr.L.R. Pujari, learned Assistant Government Pleader for the respondent No.1 – State. None for the respondent No.2. Though the name of Mr.P.S. Oza, learned counsel appears for the respondent No.2, there is not representation on his behalf, I proceed ex-parte against the respondent No.2.

2. By this writ application, the petitioners seek to challenge the correctness, validity and propriety of the order dtd.7/12/1985 passed by the Deputy Collector (Land Reforms), Ahmedabad in Tenancy Appeal No.45 of 1985 and order dtd.23/11/1990 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/71 of 1986.

3. Short facts necessary for disposal of the present writ application are that the land bearing Survey No.288 admeasuring 101 Acres and 21 Gunthas of village Moraiya, Taluka Sanand, District Ahmedabad belonged to one Kasturbhai Lalbhai, since deceased. After coming into force of Sec.32-G w.e.f. 1/4/1957 of Bombay Tenancy and Agricultural Lands Act, 1940 (“the Act” for short), the State Government wanted to confer rights on the son of the soil, or on the tiller, who was in possession of the property as a tenant. Accordingly, the case of land bearing Survey No.288 and other survey numbers was

taken up for disposal of the land under those Survey Numbers. By order dtd.7/2/1969, learned Mamlatdar-cum-Agricultural Lands Tribunal (“the ALT” for short), Sanand in Case No.168 of 1969, allotted 3 Acres of Survey No.284, 5 Acres and 32 Gunthas of Survey No.288 and 1 Acre and 8 Gunthas of Survey No.312, in favour of one Keshavbhai Haribhai, father of the petitioners. After the said order was made, the father of the petitioners was required to deposit the purchase price. On deposit of the said money, under sec.32-M of the Act, a certificate of title was issued in favour of the petitioners' father. For the petitioners' father and the State, that was the end of the matter. Neither the original owner, nor anybody else ever challenged the order dtd.7/2/1969 either before the said Mamlatdar or before any appellate or revisional authority. The name of the Keshavbhai Haribhai was reflected in the Village Form No.7/12 since 1955-56. It is to be noted that either during the process of allotment or after the allotment or after the issuance of the certificate under sec.32-M of the Act, none appeared and challenged the proceedings or the Certificate.

4. However, almost after a period of 15 years of the settlement, on 20/10/1984, the respondent No.2

Gorabhai Bhanabhai Parmar made an application under sec.32-G of the Act to the Mamlatdar-cum-ALT for being declared a deemed purchaser of land admeasuring 7 Acres and 32 Gunthas of land of Survey No.288 and other Survey Numbers. This time, the said land admeasuring 7 Acres and 32 Gunthas included 4 Acres and 26 Gunthas of land, which was already settled in favour of the petitioners' father.

5. It is the contention of the petitioners that neither the petitioners nor their father were joined as parties in the said proceedings, no notice was issued to them, nor they were heard.

6. After hearing the respondent No.2, the Mamlatdar-cum-ALT, vide his order dtd.15/4/1985, rejected the application holding inter-alia that the land had already been allotted to different persons in earlier proceedings under sec.32-G of the Act and as such, no land was available for being settled in favour of the respondent No.2.

7. The respondent No.2, being aggrieved by the order dtd.15/4/1985, preferred Tenancy Appeal No.45 of 1985, which was heard and decided by the learned Deputy Collector (Land Reform), Ahmedabad. The said appeal

came to be allowed on 7/12/1985 and an order was made in favour of the respondent No.2. The petitioners after learning about the said order, challenged the said order before the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/71 of 1986. As the revision application came to be dismissed, the petitioners are before this Court.

8. Mr.Thakor, learned counsel for the petitioners submits that if the process for allotment of the land and settlement of the land was undertaken under sec.32-G of the Act and the land was ultimately allotted vide order dtd.7/2/1969 and the order of allotment was never challenged by anybody, then, none was entitled to allot or settle the very same land in favour of a third party. His further submission is that not only the land was allotted in favour of the petitioners' father on 7/2/1969, but even the petitioners' father had deposited the purchase money and a certificate of title-cum-settlement was issued in favour of petitioners' father under sec.32-M of the Act and as the said certificate is final for all practical purposes, the Mamlatdar was absolutely justified in rejecting the application filed by the respondent No.2. His further submission is that if the Mamlatdar had made an order

that the land was already distributed, allotted and settled, then, the Deputy Collector could not proceed to hear the appeal in absence of those persons who were to be adversely affected by the order proposed to be made by the Deputy Collector. His submission is that the order passed by the Deputy Collector and confirmed by the Gujarat Revenue Tribunal are bad in law and are in breach of principles of natural justice.

9. Mr.Vibhuti Nanavati, learned counsel for the heirs of original land owner - respondent No.3 submits that he has nothing to say in the matter, because, the land had been taken away from their possession long back and they have no right in the property.

10. After hearing the learned counsel for the parties, I am of the opinion that the order passed by the Gujarat Revenue Tribunal in revision, the order passed by the Deputy Collector in appeal and the order passed by the Mamlatdar-cum-ALT in original proceedings, cannot be allowed to stand, because, the petitioners who claim rights in the property through their father, were never joined as party respondents / defendants.

11. It is trite to say that in a case where a party has a right to oppose the application filed by some applicant, then,

such party is required to be heard.

12. In the present matter, from the order dtd.17/2/1969, it would clearly appear that part of land bearing Survey No.288 (which includes the land in dispute) was settled in favour of the petitioners' father and a certificate was issued under sec.32-M of the Act. If that is an undisputed position, then, the petitioners were required to be heard in the matter and no order could be made against the interest of the petitioners by any authority.

13. Taking into consideration the totality of the circumstances, I quash all the orders impugned in the this writ application and remand the matter back to the Mamlatdar-cum-ALT to restore Tenancy Case No.8114 of 1984. The petitioners shall appear before the said Mamlatdar-cum-ALT on 26/2/2007 with a copy of this order. After receiving the copy, the Mamlatdar-cum-ALT shall issue notice to the respondent No.2, because he is not present in this Court and no direction can be issued to him to appear before the Mamlatdar. After serving notice upon the original applicant / present respondent No.2, the Mamlatdar shall give appropriate opportunity to the parties to file their claims, counter claims / written statement. He shall, thereafter, grant appropriate

opportunity to the parties to lead oral evidence, and produce the documentary evidence, after hearing the parties, he shall decide the matter by a speaking order in accordance with law either granting or rejecting the application filed by the respondent No.2. In any case, the matter shall be disposed of by the said Mamlatdar-cum-ALT within one year from the date of appearance of the petitioners.

14. The petition is allowed to the extent indicated above. Rule is made absolute. No costs.

(R.S. GARG, J.)

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